

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

1988.05.16-2

525 GOLDEN GATE AVENUE

SAN FRANCISCO, CALIFORNIA 94102

Legal Section

ADDRESS REPLY TO:

P.O. BOX 603

San Francisco, CA 94102

IN REPLY REFER TO:

May 16, 1988

Richard S. Rosenberg, Esq.  
Ballard, Rosenberg & Golper  
10 Universal City Plaza, 16th Floor  
Los Angeles, CA 91608

Dear Mr. Rosenberg:

The Labor Commissioner has asked me to respond to your letter received April 20, 1988, requesting an interpretation of the language of Labor Code §551.

Your questions specifically ask whether one may reconcile the IWC Orders with Labor Code §551 and whether the language contained in IWC Order 8-80 granting exemptions to the "grape industry" would apply to wineries.

The Division perceives no conflict between the provisions of the statutory scheme contained in Labor Code §§ 510 through 556 and the language contained in IWC Order 8-80. However, if there were a conflict, the provisions of the statute would, of course, prevail where such provisions provided more protection to the employee. However, where the IWC Order provided more protection and was not in direct conflict with the provisions of the statute, the IWC Order would apply.

The clear language of Labor Code §554 provides that:

Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receive days of rest equivalent to one day's rest in seven.

As you can see, in the situation you describe, there would be no violation of Labor Code §551 were an employee to work seven days in a week so long as the employee does not exceed seventy-two hours in the week and the proviso contained in Labor Code §554 is satisfied.

In answer to your second query, the provisions of Labor Code §554 which provide that the Chapter shall not apply "to work performed in the protection of life or property from loss or destruction" may, under certain circumstances, exempt winery

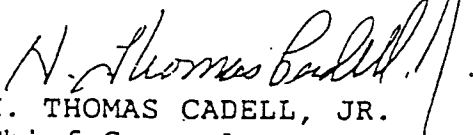
Richard S. Rosenberg, Esq.  
May 16, 1988  
Page 2

workers from the provisions of the day's rest law. The language of the sentence indicates that the exemption was designed to cover unanticipated events and would only apply for a limited period of time during the peak harvest time while there was a real and apparent likelihood of loss or destruction of the grapes which could not be cured by hiring additional workers.

You ask whether the phrase "grape industry" includes the companies "processing the grapes". There is no definition of the term "grape industry" found in the Orders. The Division has historically taken the position that wineries are covered under the provisions of Order 8-80 by reason of the use of the term "fermenting" in the definition section of the Order. While it may be argued that it would be more appropriate to describe wineries as being part of the "wine industry" it would appear that inasmuch as wineries are covered only because they are engaged in fermenting grapes, it follows that the Industrial Welfare Commissioners considered wineries part of the "grape industry" for purposes of the exemption mentioned at subdivision 3(A)(1)(a).

If you have any further questions please direct them to the undersigned or to your local District Office of the Division.

Yours truly,

  
H. THOMAS CADELL, JR.  
Chief Counsel

c.c. Lloyd W. Aubry, Jr. ✓